

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

**GEOSOUTHERN ENERGY  
CORPORATION, INC.,**

**Plaintiff,**

**v.**

**UNITED STATES OF AMERICA,**

**Defendant.**

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**Docket No.**

**COMPLAINT FOR REFUND**

GeoSouthern Energy Corporation, Inc. (“Plaintiff” or “GeoSouthern”) hereby files this Complaint for Refund (“Complaint”) against Defendant United States of America and for this cause of action states as follows:

**I.**

Plaintiff is GeoSouthern Energy Corporation, Inc., a corporation validly formed under Texas law with places of business in Tyler and Polk Counties.

**II.**

Defendant is the United States of America and may be served by mailing two (2) copies of this Complaint by certified mail, return receipt requested, and addressed to the Civil Process Clerk at the office of the United States Attorney for the Eastern District of Texas, Attn: Civil Division, 110 N. College, #700, Tyler, Texas 75702; to the Honorable Michael Mukasey, Attorney General of the United States, Tenth and Pennsylvania Avenues, N.W., Washington, D.C. 20530; to Linda Stiff, Commissioner of Internal Revenue, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; to James D.L. Alexander, Revenue Agent, Internal Revenue Service, LMSB:NRC:1029:JDLA, Stop 4103, 1919 Smith Street, Houston,

Texas 77002; and to Janet A. Miller, SBSE, Technical Services Territory Manager, Gulf States Area, Internal Revenue Service, 1919 Smith Street, Mail Stop 4020HOU, Houston, Texas 77002.

### III.

This is a civil action arising under the laws of the Internal Revenue Code for the refund of federal income taxes, interest, and penalties pursuant to Title 26, United States Code §§ 11, *et seq.*, erroneously and illegally assessed against Plaintiff and collected from Plaintiff in the total amount of \$1,072,170.51, or such other amounts as in law and in fact are ultimately recoverable.

### IV.

Jurisdiction is conferred upon this Court by Title 28, United States Code § 1346(a)(1), and venue is proper pursuant to Title 28, United States Code § 1402(a)(1).

### V.

Plaintiff GeoSouthern timely filed with the Internal Revenue Service, Internal Revenue Center, Ogden, Utah 84201-0012, a Form 1120 U.S. Corporation Income Tax Return for the tax year ending March 31, 2003, which is currently at issue in this case.

### VI.

On or about November 27, 2006, the Commissioner of Internal Revenue issued a Notice of Deficiency, a copy of which is attached as Exhibit A, to Plaintiff. The deficiency as determined by the Commissioner was comprised of United States corporate income taxes and penalties for the tax year ending March 31, 2003. The proposed deficiency and penalties were as follows:

YEAR	DEFICIENCY	§ 6651(a)(1)	§ 6651(a)(2)	§ 6655
3/31/03	\$682,922.00	\$153,657.00	undetermined	\$21,259.00

## VII.

In the Notice of Deficiency, the Commissioner based the deficiencies upon the determination that GeoSouthern did not file a return for the tax year ending March 31, 2003 because the filed return was not signed by a duly authorized officer of GeoSouthern.

## VIII.

In the Notice of Deficiency, the Commissioner proposed an alternative theory of deficiency and penalties in the event that the Court determines that Plaintiff properly filed a return:

YEAR	DEFICIENCY	§ 6662
3/31/03	\$682,922.00	\$136,584.00

## IX.

Plaintiff disputes the entire amount of the proposed deficiency and the proposed penalties under both the Commissioner's primary and alternative positions.

## X.

Plaintiff timely filed a valid Form 1120 U.S. Corporate Income Tax Return for the tax year ending March 31, 2003 on or before December 15, 2003. This return was received by the IRS on December 17, 2003 as stated in the Notice of Deficiency attached as Exhibit A.

## XI.

GeoSouthern's Form 1120 return for the tax year ending March 31, 2003 was signed by an officer of the corporation, John Perrella.

XII.

In every respect, GeoSouthern properly calculated and reported on its tax return for the tax year ending March 31, 2003 each and every item of income, gain, loss, deduction and credit for the tax year ending March 31, 2003.

XIII.

Plaintiff reserves the right to claim additional deductions or credits as may be substantiated in this case and to claim a refund of any and all United States corporate income taxes previously paid by or on behalf of Plaintiff in excess of its ultimate liability for the tax year ending March 31, 2003.

XIV.

Sometime in early April 2007, GeoSouthern received a Notice of Tax Due as of March 26, 2007 for the tax year ending March 31, 2003 from the Internal Revenue Service (“IRS”).

XV.

The Notice of Tax Due reflects the primary position taken in the Notice of Deficiency.

XVI.

On April 19, 2007, GeoSouthern tendered payment of the full amount listed in the Notice of Tax Due to the IRS, and stated that it intended to file a claim for refund of this amount. The Notice of Tax Due and proof of receipt of payment are attached as Exhibit B.

XVII.

In addition, on June 4, 2007, the IRS assessed additional penalties and interest. The assessment and proof of payment of this amount are attached as Exhibit C.

XVIII.

In summary, GeoSouthern has paid the following amounts assessed erroneously by the IRS:

Addition to tax	\$ 682,922.00
Penalty under IRC § 6651(a)(1)	\$ 153,657.00
Penalty under IRC § 6655	\$ 21,259.00
Interest assessed on Mar. 26, 2007	\$ 205,096.00
Penalty under IRC § 6651(a)(2)	\$ 3,414.61
<u>Interest assessed on June 4, 2007</u>	<u>\$ 5,821.90</u>

**TOTAL UNDER ALL NOTICES      \$1,072,170.51**

XIX.

On June 13, 2007, GeoSouthern filed a Form 843, Claim for Refund and Request for Abatement, and a Form 1120X, Amended U.S. Corporation Income Tax Return and claim for refund. These forms are attached as Exhibit D.

XX.

Both the Form 843 and the Form 1120X requested an immediate disallowance of the claims for refund pursuant to IR 1600 (April 26, 1976), for the purpose of establishing refund jurisdiction in this Court.

XXI.

As of the date of this Complaint, the IRS has neither allowed nor disallowed all or part of either Claim for Refund.

XXII.

More than six months has elapsed since GeoSouthern filed its Forms 843 and 1120X.

XXIII.

As grounds for recovery, Plaintiff incorporates herein by reference the averments made in the claims for refund, Forms 843 and 1120X.

XXIV.

Plaintiff has overpaid federal income taxes and is entitled to recover from the Defendant \$1,072,170.51, or such other amount as may be legally refundable, plus penalties and statutory interest, if applicable.

XXV.

Plaintiff is the sole owner of the claims for refund filed June 13, 2007, and has not assigned all or any part of that claim.

WHEREFORE, Plaintiff prays that this Court hear this case and enter a judgment against Defendant for \$1,072,170.51, or such other amount as may be legally refundable, together with attorney's fees, costs, and interest as provided by law. Plaintiff further prays that the Court hold that (i) Plaintiff timely filed a valid income tax return for the tax year ending March 31, 2003, (ii) there are no adjustments to Plaintiff's tax return for the tax year ending March 31, 2003, and (iii) John Perrella, the signatory of the March 31, 2003 return, was an officer of GeoSouthern Energy Corporation for said tax year. Plaintiff also requests that the Court grant Plaintiff such other and further relief as to which it may be entitled.

Respectfully submitted on February 19, 2008,  
/s/ Laura L. Gavioli

Charles M. Meadows, Jr.

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Laura L. Gavioli

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ATTORNEYS FOR GEOSOUTHERN ENERGY  
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